IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1106 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATBHAI J DODIA - Petitioner(s)

Versus

COMMISSIONER - Respondent(s)

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Appearance :

MR YV SHAH for Petitioner No(s).: 1.

MR HS MUNSHAW for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 04/07/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 5th February, 1997 passed by the Labour Court, Bhavnagar in Reference [L.C.B.] No. 414/88, whereby the Labour Court has denied full back wages.

2. The short facts of the case are that the petitioner workman was working as a Conductor on daily wage basis. While the petitioner workman was on duty, the bus was checked by the checking squad of the respondent Corporation wherein certain irregularities in the collection of the fares and issuance of tickets were found. Therefore, charge sheet was issued and departmental inquiry was held against the petitioner workman. Since the charges against the petitioner workman were proved, he was suspended vide order dated 1st March, 1988. Thereafter considering the various factual aspects like statement of the passengers, way bill etc., the petitioner workman was dismissed from the service w.e.f. 16th June, 1988.

2.1. Being aggrieved by the said action of the respondent Corporation, the petitioner workman raised an industrial dispute which was ultimately referred to the Labour Court, Bhavnagar for adjudication. The Labour Court after considering the case on merits, partly allowed the Reference with the aforesaid directions. Hence, this petition.

3. Mr. Shah learned advocate for the petitioner workman has contended that the Labour Court has committed an error in denying back wages in view of the fact that the respondent Corporation had failed to establish the charges of misappropriation of the amount before the Labour Court and even otherwise when gainful employment is not proved by the employer, the Labour Court ought to have awarded full back wages. In support of his contention, he has relied upon the decision of the Apex Court in the case

of **Chandra Shekara Chari H.S. v. Divisional Controller, KSRTC & Anr., reported in 1999 LLJ p. 1322**, whereby the Apex Court has held as under :-

> "Non payment of back wages justified in some circumstances- but they cannot be denied for reason that charges could have been established with better proof."

4. I have heard the learned counsel for the respective parties. Having perused the materials placed on record, it transpires that the Labour Court has not committed any error in ordering reinstatement in service *inasmuch* as the Labour Court has found that the respondent Corporation has dismissed the petitioner workman without following any procedure under the Industrial Disputes Act, 1947. Thus, I am in complete agreement with the reasonings adopted and finding arrived at by the Labour Court and find no reason to interfere qua the direction of reinstatement in service.

4.1. Moreover it appears that the Labour Court was justified in denying the back wages in view of the fact that the petitioner workman has committed certain financial irregularities which were also admitted by the petitioner workman during the departmental inquiry. Keeping in mind the principle laid down by the Apex Court that a workman shall be entitled for back wages if he has worked for the interim period, the petitioner herein cannot be said to be entitled for back wages. Hence, the award passed by the Labour Court is just and proper which does not call for any

interference by this Court.

5. In the result, the petition is dismissed. The impugned award is confirmed. Rule is discharged with no order as to costs. Interim relief if any, stands vacated. However, if the award is not implemented, appropriate application should be filed for implementation of the award.

[K.S. JHAVERI, J.]

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